

LFC Requester:**Aurora Sanchez**

**AGENCY BILL ANALYSIS
2016 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original X **Amendment**

Correction **Substitute**

Date 1/9/2016

Bill No: SB 45

Sponsor: Lisa Torraco

Agency Code: 305

Short Create Crime of DWI with

Person Writing Jeres S. Rael, AAG

Title: Minor in the Car

Phone: 505-629-9131 **Email** jrael@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

N/A

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

Synopsis:

SB 45 makes driving while intoxicated (DWI) "per se" with a minor in the vehicle a misdemeanor offense.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

SB 45 appears to create a new crime for DWI with a minor in the vehicle. However, DWI with a minor in the vehicle is already covered by §30-6-1, NMSA 1978, New Mexico's Child Abuse Statute. See, *State v. Orquiz*, 2012-NMCA-080 stating:

“[I]t would be inconsistent for this Court to recognize the risk and danger posed to the general public by a DWI driver, yet not extend this same level of concern and protection to a child who is an actual passenger in the DWI driver's moving vehicle. See *State v. Graham*, 2005–NMSC–004, ¶9, 137 N.M. 197, 109 P.3d 285 (given the compelling public interest in protecting children, the Legislature—by including endangerment in Section 30–6–1—has expressed its intent to extend the crime of child abuse to certain conduct even if the child has not suffered physical harm). In such an instance, not only does the intoxicated driver threaten the safety of the general public, but the driver also poses an immediate, substantial, and foreseeable threat to a specific member of the general public who is a child and a passenger in the driver's vehicle. For this reason, just as the driver's actions strictly constitute DWI, even absent any additional “plus factor,” so do the driver's actions constitute child abuse by endangerment.”

SB 45 in reality is reducing the penalty of DWI with a minor in the vehicle from a felony offense to a misdemeanor offense.

Further SB 45 fails to address individuals who are “impaired to the slightest degree” under §66-8-102, NMSA 1978. This omission or oversight may prevent individuals who are “impaired to the slightest degree” from being charged under SB 45 and/or §30-6-1, NMSA 1978 when they have a minor in the vehicle.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo: individuals who drive while intoxicated with a child in the vehicle may be charged with the third degree felony offense of child abuse in addition to driving while intoxicated (as enumerated by statute), for a greater amount of jurisdiction than a single misdemeanor as proposed by this legislation.

AMENDMENTS

N/A